**HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE**

**AND**

**HON'BLE SHRI JUSTICE G. BHAVANI PRASAD**

**WRIT APPEAL No. 2231 OF 2005**

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**Between:**

NTR University of Health Sciences,

Vijayawada, rep. by its Registrar

**……Appellant**

**And**

Dr. M.V. Sudhakar and three others

**……Respondents**

**:: JUDGMENT ::**

Counsel for the Appellant : Shri C.V. Mohan Reddy,

Senior Advocate assisted

by Shri D.V. Nagarjuna

Babu

Counsel for Respondent Nos.1 to 3 : Sri Nuty Ram Mohan Rao

**Dated: 18-04-2006**

**Per G.S. SINGHVI, CJ**

The prospects of admissions of Scheduled Castes candidates to Post Graduate Medical courses made in 2003-04 being totally jeopardized has been projected as the ground by Shri C.V. Mohan Reddy, Senior Advocate appearing for N.T.R. University of Health Sciences, Vijayawada (for short 'the University') for setting aside order dated 14.03.2005 passed by the learned Single Judge in Writ Petition No.23166 of 2004, whereby he directed review of the admissions of the writ petitioners (respondent Nos.1 to 3) as per their merit. Shri Reddy also invoked the doctrine of impossibility for persuading the Division Bench to upset the direction given by the learned Single Judge. As against this, Sri Nuty Ram Mohan Rao, learned counsel for respondent Nos. 1 to 3, in his usual style, tried to impress upon the Court that doctrine of prospective overruling is the preserve of the Supreme Court and cannot be invoked by the High Courts for declaring that the judgment of the Supreme Court in **E.V. CHINNAIAH v. STATE OF A.P** shall not affect the admissions already made.

Respondent Nos.1 to 3, all of who belong to scheduled castes appeared in the entrance test conducted by the University on 31-12-2003 for admission to Post

Graduate Medical courses. On being declared successful in the written test, they were called for counselling held between 21.04.2004 and 22.05.2004. Respondent No.1, who was placed at serial number 761 in the overall merit of candidates, was admitted in Post Graduate Diploma in Anesthesia in Andhra Medical College. Respondent No.2, who was placed at number 537, was admitted in Post Graduate Diploma in Anesthesia in Osmania Medical College and respondent No.3, who was placed at number 287, was admitted in Post Graduate Diploma Course in Child Health in Andhra Medical College. These admissions were made keeping in view the provisions of the Andhra Pradesh Scheduled Castes (Rationalization of Reservations) Act, 2000 (for short 'the 2000 Act') vide which Scheduled Castes were divided into four sub-groups. If the micro-classification of Scheduled Castes had not been resorted to in terms of the provisions of the 2000 Act, respondent Nos.1 to 3 may perhaps have got admission for Post-Graduate Degree courses and some candidates, who got admissions in the Degree courses despite their lower merit may have been admitted in the Diploma Courses.

The constitutionality of the 2000 Act was challenged by some of the affected persons on the ground that micro classification of Scheduled Castes into four categories was an anathema to the constitutional provisions enshrined in Articles 14, 15 and 16 of the Constitution. A Special Bench of Five Judges of this Court dismissed the writ petition on 08.11.2000. On the basis of the leave granted by this Court, the matter was carried to the Supreme Court.

The Constitution Bench of the Supreme Court struck down the 2000 Act on the ground that the same was violative of Articles 15 (4) and 16 (4) of the Constitution – **E.V. CHINNAIAH v. STATE OF ANDHRA PRADESH** (supra). The Supreme Court directed that any admission made to the professional courses or appointment made pursuant to the impugned legislation would abide by the result of the appeals. This was also incorporated in the admissions made by the University for the year 2003-04 Paragraphs 43 and 44 of the judgment of the majority of the Constitution Bench read as under:

> "The very fact that the members of the Scheduled Castes are most backward amongst the backward classes and the impugned legislation having already proceeded on the basis that they are not adequately represented both in terms of clause (4) of Article 15 and

clause (4) of Article 16 of the Constitution, a further classification by way of micro-classification is not permissible. Such classification of the members of different classes of people based on their respective castes would also be violative of the doctrine of reasonableness. Article 341 provides that exclusion even of a part or a group of castes from the Presidential List can be done only by Parliament. The logical corollary thereof would be that the State Legislatures are forbidden from doing that. A uniform yardstick must be adopted for giving benefits to the members of the Scheduled Castes for the purpose of the Constitution. The impugned legislation being contrary to the above constitutional scheme cannot, therefore, be sustained.

For the reasons stated above, we are of the considered opinion that the impugned legislation apart from being beyond the legislative competence of the State is also violative of Article 14 of the Constitution and hence is liable to be declared as ultra vires the Constitution."

With a view to avoid any confusion, we deem it proper to mention that other two Hon'ble Judges had recorded separate concurring opinions.

As a sequel to the striking down of the 2000 Act, the State and its instrumentalities were expected to put the clock in reverse gear and remove the injustice which may have been caused/done to the meritorious candidates belonging to Scheduled Castes who may have been deprived of their legitimate right of admission in Post Graduate courses on account of implementation of the policy of reservation enshrined in the 2000 Act. If that had been done, perhaps respondent Nos.1 to 3 may have been admitted in Post Graduate Decree courses. However, the fact of the matter is that the appellant – University did not take corrective measures. This impelled respondent Nos.1 to 3 to seek intervention of the Court by filing petition under Article 226 of the Constitution of India. They pleaded that as a logical corollary to the striking down of the 2000 Act, the University was duty bound to review the admissions made for the year 2003-04 and readjust their admissions strictly in accordance with their over all merit among the candidates of Scheduled Castes.

In the counter filed by the Registrar of the University, an objection was taken

to the maintainability of the writ petition on the ground of non-impleadment of Medical Council of India as party respondent. On merits, it was averred that the admissions had been made in accordance with the provisions contained in the Andhra Pradesh Medical Colleges (Admission into Post Graduate Medical Courses) Rules 1997, as amended vide G.O.Ms.No.719, dated 16.12.2003. It was further averred that admissions to Post Graduate Medical courses for academic year 2003-04 have been completed and the same cannot be reopened in view of the directions issued by the Supreme Court in **MEDICAL COUNCIL OF INDIA v. MADHU SINGH** and the guidelines issued by the Medical Council of India vide communication No. MCI-23(1)/2003-Med/28074, dated 03.01.2004. Reliance was also placed on the judgments of the Supreme Court in **SHAFALI NANDWANI v. STATE OF HARYANA**, **NEELU ARORA v. UNION OF INDIA** and it was averred that the admissions made in 2003 cannot be nullified or re-adjusted after the cut-off date fixed by the Supreme Court and the Medical Council of India.

The learned Single Judge relied on interim order dated
25-01-2001 passed by the Supreme Court, which was also reflected in the admissions made by the University and held that once the offending legislation had been struck down, it was the duty of the State and its instrumentalities to review all the actions taken pursuant to 2000 Act. The learned Single Judge felt that it was the duty of the non-petitioners to review the admission and their failure to do so was not sufficient to deprive the writ petitioners of their legitimate right to be admitted in appropriate courses. For the sake of convenient reference, paragraphs 6,7,9,10 and 11 of the order of the learned Single Judge are reproduced below:

> "**6**. From a reading of the judgment of the Apex Court in **E.V. Chinnaiah case** (1 supra), it is clear that the Act was struck down on the ground that it is beyond the competence of the State Legislature and as it is also violative of Art. 14 of the Constitution of India. When once the Apex Court holds an enactment to be beyond the competence of State Legislature, and is violative of Art. 14 of the Constitution, it means that the said enactment is void ab initio, and consequently it should be deemed to have been never in existence. In "A Treatise on the Constitutional Limitations" by Thomas M. Cooley (1972 edition) under the head 'consequences if a statute is void' at page 188 it is observed
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> > "When a statue is adjudged to be unconstitutional, it is as if it had never been. Rights cannot be built up under it; contracts which

depend upon it for their consideration are void; it constitutes a protection to no one who has acted under it, and no one can be punished for having refused obedience to it before the decision was made. And what is true of an act void in toto is true also as to any part of an act which is found to be unconstitutional, and which, consequently, is to be regarded as having never, at any time, been possessed of any legal force."

I n **DEEPCHAND v. STATE OF U.P.**(AIR 1959 SC 648) and **JAGANNATH V. AUTHORISED OFFICER** (AIR 1972 SC 425 (para 23) the apex Court held that enactments, which are struck down as unconstitutional are still born laws, and should be deemed to have never existed. When once the Act was struck down, all the actions taken in pursuance of the Rules and G.Os. issued there under are void ab initio. Therefore, second respondent, who admitted students belonging to Scheduled Caste community subject to the result of the appeal, cannot be heard to say that the admissions of such students cannot be reviewed in spite of the apex Court striking down the Act. So, respondents are bound to review the allotment made to the Scheduled Caste students and re-adjust the seats on the basis of their respective rank and marks.

**7.** If respondents wanted to save the admissions already made by them, they ought to have made a request to the Supreme Court, at the time of delivering of judgment, that admissions already made may be saved, because it is only the Supreme Court that has the power to prospectively overrule an enactment, and no other Court in the country has such power - See **GOLAK NATH v. STATE OF PUNJAB** (AIR 1967 SC 1643) where it is observed -

"As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions: (1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest Court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the Courts in India; (3) the scope of the retroactive operative of the law declared by the Supreme Court superseding its "earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."

**9.** It is no doubt true that if re-adjustment is made the students have to complete the full term of the course into which they are admitted and cannot seek any exemption. Had the respondents not followed the rule of reservation among the Scheduled Caste students,

petitioners might have got a seat in the subject of their choice. Now, by virtue of the review, if they get a seat in the subject of their choice they will have to study for the full term but cannot say that they may be exempted for studying the full term.

**10.** The contention of the respondents that the petition is bad for non-joinder of all the Scheduled Caste community students and the Medical Council of India, is to say the least, a desperate attempt to avoid the exercise of review. As stated earlier, in view of the interim order of the apex Court passed on 25.01.2001, it is the duty of the respondent to take up the review immediately after the apex Court struck down the Act. Since all the Scheduled Caste community people, while being admitted, were made aware that their admission is subject to the result of the appeal before the Supreme Court, they cannot be said to be prejudiced, even if they have to go to other course of study, because they got admission due to a reservation which is held to be impermissible and was struck down by the apex court.

**11.** In the result, the petition is allowed and the Rule Nisi is made absolute. Respondents are directed to review the admissions of the petitioners as per their merit, subject to the condition that they should complete the term of study from the date of admission into the new course into which they are admitted. Petitioners are entitled to costs. Advocate fee is fixed at Rs.1,500/- (Rupees one thousand five hundred only)."

Shri C.V. Mohan Reddy, Senior Advocate appearing for the appellant assailed the direction given by the learned Single Judge and argued that the same should be set aside because implementation thereof would necessarily result in a chain reaction and cause displacement of an unknown number of students after almost two years of their admissions, and none of them is made a party to this litigation. Shri Reddy emphasized that exercise of review, if undertaken in compliance of the direction given by the learned Single Judge, will not only jeopardize the admissions made in 2003-04 but will also adversely affect the on going process of admission for the academic year 2006-07. He submitted that it will be impossible for respondent Nos. 1 to 3 and other candidates, who were admitted in 2003-04, to complete the course in the new specialities/branches and their adjustment in the academic session 2006-07 will necessarily result in depriving some prospective candidates of their right to be considered for admission against the available seats. Learned counsel relied on the judgments of the Supreme Court in **MADHU SINGH**'s case (supra), **SHAFALI**

**NANDWANI**'s case (supra), **NEELU ARORA**'s case (supra) and **SUPREET BATRA**'s case (supra) and argued that the learned Single Judge should not have ordained review/reshuffle of the admissions made in 2003-04 overlooking the grave consequences of the review exercise. Another facet of the submission of the learned counsel is that if the admissions made in 2003-04 are reviewed in 2006, the University will have to violate the regulations framed by the Medical Council of India under Section 19-A read with Section 33 of the Medical Council of India Act, 1956 because that exercise would result in increase in the number of seats during the current academic year, which is impermissible. He also pointed out that the process of admissions for the academic year 2006-07 is on and the candidates, who have taken the entrance examination, will have the right to be considered for admission against the available seats as per their inter se merit and those seats cannot be offered to respondent Nos. 1 to 3 and other candidates, who are likely to be reshuffled as a result of implementation of the direction given by the learned Single Judge.

Sri Nuty Ram Mohan Rao relied on the judgments of the Supreme Court in **GOLAK NATH v. STATE OF PUNJAB**, **MANAGING DIRECTOR, ECIL v. B. KARUNAKAR**, **SARWAN KUMAR v. MADAN LAL AGGARWAL** and **M.A. MURTHY v. STATE OF KARNATAKA** and argued that in the absence of any express direction by the Supreme Court in **E.V.CHINNAIAH**'s case (supra) that the judgment would operate prospectively, it is not within the domain of the High Court to direct that State and its functionaries should not take corrective actions by treating the 2000 Act as non-existent. Learned counsel emphasized that on the basis of their over all merit, respondent Nos.1 to 3 were entitled to be admitted in the Post Graduate Degree courses, but they were deprived of this valuable right on account of a patently unconstitutional legislation, whereby the Scheduled Castes were divided into four sub-groups. Sri Nuty Ram Mohan Rao submitted that many less meritorious candidates within the reserved category of Scheduled Castes must have been admitted to Post Graduate Degree courses by virtue of implementation of the policy enshrined in 2000 Act and the learned Single Judge did not commit any error by directing the appellant and the State Government to undertake the exercise for review of the admissions already made. Learned counsel fairly conceded that the review exercise is likely to lead to a chain of reaction and may affect admissions of

some of the candidates, who were not parties in the writ petition, but submitted that the suggestive argument of violation of the rules of natural justice made by the learned counsel for the appellant should not be accepted because every candidate had been made aware of the implementation of the interim order of the Supreme Court.

We have thoughtfully considered the entire matter. The question whether the High Court can invoke the doctrine of prospective overruling does not call for any debate and must be treated as settled by the judgment of the 11 Judges Bench of the Supreme Court in **GOLAK NATH v. STATE OF PUNJAB** (supra). The other judgments on which Sri Nuty Ram Mohan Rao has placed reliance contain reiteration of the law that doctrine of prospective overruling can be invoked only by the Supreme Court and not by the High Courts. Therefore, we are in complete agreement with the learned counsel for respondent Nos. 1 to 3 that it is not open for this Court to declare that the judgment of the Supreme Court in **E.V. CHANNAIAH**'s case (supra) would be applicable with effect from 05-11-2004 only.

However, acceptance of the aforementioned legal submission of the learned counsel for the contesting respondents is not sufficient for sustaining the order under challenge. At the cost of repetition, we consider it appropriate to note that respondent Nos.1 to 3 and other candidates, who appeared in the entrance test held by the University in 2003, had been admitted in the Post Graduate Diploma courses in the year 2003-04. As on the date of decision of the Supreme Court, all the candidates had completed almost seven months studies. As on the date of the judgment of the learned Single Judge, each one of them must have completed almost one year's study. As on today, respondent Nos. 1 to 3 are on the verge of completing their courses and those admitted to degree courses are left with one year (theoretically). If the direction of the learned Single Judge is implemented at this stage, a chaotic situation is bound to ensue. There is every likelihood of all 101 admissions made in 2003-04 being reshuffled. Some of the candidates admitted to the degree courses despite their lower merit as compared to other candidates may have to be transferred to diploma courses. This exercise is also bound to affect some others, who may get admission in the degree courses. In any event, specialities of most of the candidates are bound to be changed and all the

candidates will have to start their courses afresh. If the State Government and the University implement the direction of the learned Single Judge, they are bound to face the dilemma of violating the mandate of the regulations framed under Section 19-A read with Section 33 of the Medical Council of India Act, 1956 which fixes the teacher pupil ratio as well as intake capacity of different medical institutions. We can take judicial notice of the fact that the Medical Council of India has in the last few years taken an extremely rigid stand in the matter of admission to different medical courses. This is quite in consonance with the constitutional ethics of maintaining standard of medical education. The Supreme Court not only approved the guidelines framed by the Medical Council of India, but have issued mandatory directions that no mid-term admissions should be made and in any case no admission should be made in excess of approved/recognized seats. In our opinion, before ordering review of the admissions made in 2003-04, the learned Single Judge should have taken into consideration the grave adverse consequences of that exercise and judicial possibility of violation of the mandate of the Medical Council of India Act and Regulations framed thereunder, as also the directives given by the Supreme Court in **MADHU SINGH**'s case (supra), which were later on reiterated in **MRIDUL DHAR v. UNION OF INDIA**.

The matter deserves to be considered from another angle. If the admissions made in 2003-04 were to be reviewed after November 2004 or in March 2005 and even now, the entire scheme of admissions would have been and will necessarily be jeopardized. In order to make room for respondent Nos. 1 to 3 and other candidates, the University will necessarily be compelled to deny admission to the candidates who must have appeared and successfully cleared the entrance test held in 2006. Not only those freshers are not before us, even those belonging to the batch of respondent Nos. 1 to 3 were not impleaded as parties to the writ petition and none got opportunity of being heard. Ordinarily, we may have not insisted on the compliance of the rule of hearing in a case where displacement is likely to take place as a result of consequence of the judgment of the Supreme Court but in the peculiar facts of this case, we are constrained to observe that reshuffling and displacement of the students who are undergoing Post Graduate Degree and Diploma courses and had completed almost one year's of studies as on the date of

the decision of the writ petition should not have been ordered by the learned Single Judge without hearing them or at least some of them in a representative capacity. This was the minimal requirement of the rules of natural justice.

Be that as it may, we are of the considered opinion that jurisdiction under Article 226 of the Constitution cannot be exercised by this Court for creating a virtual unrest in the medical courses and cause irreparable injury to the careers of dozens of students belonging to reserved category. While taking this view we are conscious of the fact that students belonging to the reserved categories have been, over the years deprived of their legitimate right to be admitted in engineering and medical courses. Only in the recent past, some semblance of recognition has been given to the rights of the reserved category by the Court's intervention. Therefore, being a Court of equity, we are not inclined to approve the direction given by the learned Single Judge, the implementation of which is bound to disturb the admissions made in 2003-04.

In view of the above conclusion, we refrain from undertaking an elaborate judicial exercise to decipher the ambit and scope of the doctrine of impossibility and leave this to be decided in some other appropriate case.

Before concluding, we deem it proper to take cognizance of the submission of Sri Ram Mohan Rao that the Court should burden the University with some financial responsibility in lieu of its failure to take action in consonance and spirit of the order passed by the Supreme Court in **CHINNAIAH**'s case (supra). We would have delved deep into this issue and passed appropriate order for fixing the responsibility of the defaulting officer, but do not find it conducive to do so in the present case because affidavit filed in support of the writ petition is conspicuously silent on the issue of communication of the Supreme Court's final order to the authorities of the University or their suo motu acquiring knowledge about the import and implications of the verdict of the Apex Court.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. As a sequel to this, the writ petition filed by respondent Nos. 1 to 3 shall stand dismissed.

**G.S.SINGHVI, CJ**

**G.BHAVANI PRASAD, J**

18-04-2006

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